

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

TORI NEAL,)
)
Plaintiff,)
)
v.) 1:13CV904
)
POLICE OFFICER ANNA STERLING,)
et al.,)
)
Defendant(s).)

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a prisoner of the State of North Carolina, submitted a civil rights action pursuant to 42 U.S.C. § 1983, together with an Application to Proceed *In Forma Pauperis* and a Motion to Appoint Counsel. However, more recently, he submitted a request for the Court to return the Complaint if it had not yet filed it or, if the Complaint had been filed, to withdraw it. Because the Court already filed the Complaint, the Court will consider Plaintiff's request to withdraw the Complaint. Although Plaintiff does not cite Fed. R. Civ. P. 41, his request to withdraw the Complaint appears to be one appropriately made under Fed. R. Civ. P. 41(a)(1)(A)(i). He seeks to withdraw the Complaint without prejudice and Defendants have not filed an answer or motion for summary judgment. Further, such a dismissal is self-executing and requires no further action from the Court. Finally, the withdrawal moots Plaintiff's *in forma pauperis* Application and Motion to Appoint Counsel.

They will be denied for that reason. *In forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

IT IS FURTHER ORDERED that Plaintiff's Application to Proceed *In Forma Pauperis* (Docket Entry 1) and Motion to Appoint Counsel (Docket Entry 3) are DENIED for being moot.

IT IS RECOMMENDED Plaintiff's Letter (Docket Entry 4) requesting withdrawal of the Complaint be treated as a Motion to Withdraw pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), that the Complaint be deemed withdrawn, and that this action be closed.

This, the 5th day of November, 2013.

/s/ L. Patrick Auld
L. Patrick Auld
United States Magistrate Judge